

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
Petition of City of Richardson, Texas	)	
	)	
<i>Order on Reconsideration</i>	)	
To: The Commission		

**REPLY COMMENTS**

Cingular Wireless LLC ("Cingular"), on behalf of its subsidiaries and affiliates, hereby replies to the Opposition to its Petition for Reconsideration in the captioned proceeding<sup>1</sup> that was filed jointly by the Association of Public-Safety Communications Officials-International, Inc. and the National Emergency Number Association (collectively "APCO/NENA").<sup>2</sup> Cingular agrees with APCO/NENA that all parties should "focus[] on making E911 a reality."<sup>3</sup> Consistent with this approach, all stakeholders in the E911 process should support steps – such

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<sup>1</sup> *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, *Order on Reconsideration*, 17 F.C.C.R. 24282 (2002) ("*Richardson II*"); see also *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Petition of City of Richardson, Texas*, CC Docket No. 94-102, *Order*, 16 F.C.C.R. 18982 (2001) ("*Richardson I*").

<sup>2</sup> APCO/NENA Opposition to Petition for Reconsideration, CC Docket No. 94-102 (filed Mar. 24, 2003) ("Opposition"). In a footnote, APCO/NENA urge the Commission to dismiss Cingular's notice argument as repetitive under Section 1.106(b)(3) of the rules. See Opposition at n.16. This request should be rejected. Cingular's notice argument relied upon a decision issued by the United States Court of Appeals for the District of Columbia after the *Richardson II* decision. Thus, this case was not, and could not, have been raised previously and Cingular's reliance on this precedent cannot simply be dismissed as redundant.

<sup>3</sup> Opposition at 2.

as those proposed below – that expedite the *delivery* of Phase II services. Unfortunately, the current rules promote the *deployment* of Phase II technology at the expense of the delivery of Phase II service. Accordingly, the Commission should modify its rules to permit carriers to speed the delivery of Phase II services by prioritizing efforts based on the likelihood of PSAP readiness rather than the date on which a PSAP requested Phase II service.

**I. E911 PHASE II DEPLOYMENT SHOULD BE TRIGGERED BY PSAP READINESS**

APCO/NENA generally oppose reconsideration of *Richardson II* on the ground that the Order established rules that will expedite the deployment of Phase II technology.<sup>4</sup> Absent reconsideration, however, the provision of Phase II services to the public will be delayed. In order to expedite the *delivery* of Phase II services, the Commission should revert to its original rules that permitted carriers to prioritize deployment based on PSAP readiness instead of the date of a PSAP request.<sup>5</sup> At a minimum, carriers should be permitted to stop Phase II deployment when it becomes clear that a PSAP will be unable to receive and utilize Phase II data within six months of requesting the service.

The Phase II rules were designed to expedite the provision of Phase II services by ensuring that carriers could focus on satisfying requests from PSAPs that were actually ready for the information at the time of request.<sup>6</sup> In an effort to expedite Phase II *deployment*, *Richardson I* and *Richardson II* modified the rules to require carriers to commence deployment prior to PSAP readiness. APCO/NENA appropriately characterize the revised rules as requiring carriers and PSAPs to “proceed simultaneously, not sequentially, towards Phase II deployment.”<sup>7</sup>

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<sup>4</sup> Opposition at 1-2.

<sup>5</sup> Petition at 1.

<sup>6</sup> See Petition at 1-9.

<sup>7</sup> Opposition at 2 (emphasis omitted).

Unfortunately, this approach creates tremendous problems for carriers and jeopardizes the roll-out of Phase II services.

Based on the rule revisions, PSAP readiness is now irrelevant to Phase II deployment. Carriers must commence Phase II deployment in response to requests from PSAPs who *expect* to be ready in six months and must continue deploying even when a PSAP acknowledges that it will not be ready in six months. As long as the PSAP has evidence that it should be ready for Phase II service in six months, a carrier must move forward with deployment. Thus, the date of request, rather than PSAP readiness, dictates deployment efforts. As a result, carriers must expend resources deploying Phase II technology in areas where PSAPs will be unable to utilize the service *before* commencing and completing deployment in areas where the PSAPs are actually ready for the service. This delays the delivery of critical Phase II services to the public.

APCO/NENA fail to grasp the significance of this problem.<sup>8</sup> They claim that there should not be any deployment issues because “[c]arriers need only provide Phase II data if requested by a PSAP, and only if the PSAP is or will be prepared to receive and utilize that data.”<sup>9</sup> This statement fails to recognize, however, that carriers still must prioritize Phase II requests based on date rather than readiness. It also fails to recognize that the new rule precludes a carrier from shifting deployment efforts from a PSAP that initially believed it would be ready in six months but will no longer be ready at that time, to a PSAP that is actually ready for Phase II service.

To eliminate these problems and expedite Phase II deployment to PSAPs that can use the information, the Commission should return to its original rule that required PSAPs to be ready to

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<sup>8</sup> See Opposition at 7 (stating that “Cingular broadly attacks the Richardson II decision, but appears to rest much of its argument on a false assumption”).

<sup>9</sup> Opposition at 1.

receive and utilize Phase II service on the date of request. At a minimum, the Commission should clarify that its new, simultaneous deployment requirement ceases whenever a PSAP will be unable to use Phase II data within six months of its request. If a PSAP will not be ready in six months, a carrier's obligation to be ready in six months should cease simultaneously.

Cingular previously proposed such an approach whereby a carrier's Phase II deployment obligations would be tolled if a PSAP would not be ready for Phase II service,<sup>10</sup> but the "tolling" process adopted by the Commission bears little resemblance to this proposal and is a misnomer.<sup>11</sup> Under *Richardson II*, nothing is actually tolled if a PSAP produces documentation that it *should* be ready for Phase II service in six months but subsequently acknowledges that it will be unable to utilize Phase II service. The carrier still is obligated to complete "all necessary steps toward E911 implementation that are not dependent on PSAP readiness."<sup>12</sup> Moreover, the Commission's tolling process is completely unnecessary given its recognition that carriers cannot be held liable for failing to accomplish the impossible – delivering Phase II service to PSAPs that are not ready for the service.<sup>13</sup> The Commission should modify its rules to actually toll (*i.e.*, stop or suspend) a carrier's Phase II deployment obligations in response to PSAPs that will be unable to utilize the service within six months of a request. Such an approach will expedite the *delivery* of Phase II services by permitting carriers to shift precious E911 deployment resources to PSAPs that will be able to use Phase II services.

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<sup>10</sup> Cingular Wireless LLC, Petition for Reconsideration, CC Docket No. 94-102, at 12-13 (Dec. 3, 2001).

<sup>11</sup> *Richardson II*, 17 F.C.C.R. at 24285-86.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 24285.

## II. PSAPs SHOULD NOT HAVE VETO POWER OVER THE CERTIFICATION PROCESS

APCO/NENA object to the elimination of the effective veto power they were granted over the certification process established by *Richardson II*. Their argument seems to hinge simply on the fact that a post-filing objection gives “any party (not just the PSAP) . . . an opportunity to challenge the validity of the certification.”<sup>14</sup> It is unclear why requiring PSAPs and other interested parties to file objections to certifications at the same time would be inconsistent with the public interest and would justify two windows for objections.

*Richardson II* announces a clear legal principle to be followed in determining carrier liability where there are PSAP readiness issues:

The [E911] rules did not expressly speak to situations in which a PSAP has made the up-front readiness showing necessary to trigger Phase II implementation, but turns out to be incapable of receiving Phase II information at the end of the six-month implementation period. These situations place wireless carriers in a seemingly impossible position – under a literal reading of our rules, they are obligated to complete E911 Phase II implementation and begin delivering location information to the PSAP within the six-month timeframe, but they cannot fulfill this obligation until the PSAP is prepared to receive the Phase II data. *It was not our intent to impose liability in these circumstances.* Accordingly, we clarify that in these situations – *i.e.*, when the carrier is unable to begin providing Phase II service at the end of the six-month period because the PSAP is in fact not capable of receiving and utilizing the Phase II information – the carrier will not be held in violation of our rules for failing to deliver timely service.<sup>15</sup>

Despite this clear statement that carriers will not be held in violation of the E911 rules when they fail to deliver Phase II service due to PSAP readiness issues, *Richardson II* establishes a convoluted and unnecessary “certification” procedure that carriers must follow to obtain

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<sup>14</sup> Opposition at 5.

<sup>15</sup> *Richardson II*, 17 F.C.C.R. at 24285.

immunity.<sup>16</sup> Specifically, in order to qualify for “automatic” immunity (*i.e.*, no FCC inquiry), a covered CMRS carrier must file a certification with the Commission stating that its failure to deliver Phase II service to a PSAP was due solely to the PSAP’s failure to complete the steps necessary to utilize the information. In order to file a certification, carriers must provide PSAPs written notice of the proposed certification 21 days prior to filing and the PSAP must not object to the filing. If a PSAP objects to the proposed certification, the Order states that “*the carrier is unable to avail itself of the certification process.*”<sup>17</sup>

There was no reason to adopt this complicated certification process and to provide PSAPs with veto power over certifications. This approach merely creates uncertainty regarding a carrier’s possible liability where a carrier claims that it is unable to deploy due to PSAP readiness issues but the PSAP disagrees. The 21-day advance notice requirement also creates problems. As part of Phase II deployment, Cingular routinely discovers situations where it appears that a PSAP will not be ready for Phase II service within six months of its request (as required by the rules), but the PSAP adamantly maintains that it will be ready. To qualify for automatic immunity, Cingular must serve a proposed certification on the PSAP alleging that the PSAP will not be ready. This would create, however, an adversarial posture between the PSAP and the carrier.<sup>18</sup>

If the Commission fails to require PSAPs to be ready for Phase II service before requesting Phase II service, the best approach for addressing liability would be to permit carriers and PSAPs to use the entire six month deployment period to determine whether the PSAP was

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<sup>16</sup> *Id.* at 24285-86.

<sup>17</sup> *Id.* at 24286 (emphasis added).

<sup>18</sup> Moreover, as discussed in its Petition, carriers often do not discover PSAP readiness problems until end-to-end testing. In such instances, there often is not 21 days left in the six month deployment period. Petition at 16.

able to complete all steps necessary to receive and utilize Phase II information. If, at the end of this six month period, the carrier is unable to deliver Phase II service to the PSAP and believes this failure is due to PSAP readiness, the carrier should be permitted to file a certification to that effect. The carrier should be required to serve a copy of this certification on the relevant PSAP and the PSAP should have 15 days to object.<sup>19</sup> If no objection is filed, the carrier will be entitled to immunity. If an objection is filed, it would trigger a Commission inquiry and the carrier would be entitled to immunity only if the Commission concludes that the PSAP was not ready to receive and utilize Phase II service six months after requesting such service.

### CONCLUSION

For the foregoing reasons, and as urged by Cingular in its Petition, the Commission should vacate *Richardson I* and *II* and adopt a new Order (1) reaffirming that PSAPs must be ready to receive and utilize Phase II information prior to requesting service; (2) requiring PSAPs to submit readiness documentation with Phase II requests; (3) clarifying that the six-month period for responding to a PSAP request is tolled where a PSAP's readiness is challenged; and (4) establishing an expedited process for resolving disputes relating to readiness. If the Commission declines to vacate *Richardson I* and *II*, it should allow carriers to stop deploying Phase II to any PSAPs they believe will not be ready to use the information, and shift to the PSAP the burden of proving actual readiness at the end of six months. The public interest is best

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<sup>19</sup> This 15 day period parallels the time period afforded carriers for requesting readiness documentation from PSAPs. See 47 C.F.R. § 20.18(j)(3).

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